ORIGINAL

OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

UNITED STATES BANKRUPTCY COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Debtor,	:	Case No. 85-00070
INSLAW, INC.,	:	
Plaintiff,	:	Adv. Proc. No. 86-0069
v.	:	
UNITED STATES OF AMERICA,	:	
and UNITED STATES DEPARTMENT	:	
OF JUSTICE,	:	
Defendants.	:	

DEPOSITION OF WILLIAM A. HAMILTON

Washington, D. C.

May 12, 1987

(202) 628-9300
20 F STREET, N.W.

Jensen asked him to convey a message to me. And he said that Mr. Jensen wants me to know that he does not hold INSLAW accountable for the word processing debacle, that it was the government's mistake and exclusively the government's mistake.

Furthermore, that he regarded the computer sites part of the contract to be very successful and that his advice to me, and he wanted me to know that he was sending it as advice, was that I should submit a proposal to expand the number of computer sites and I should negotiate for it aggressively and that if it reached him, he would look with favor on finding the money to finance it.

Q. What did Mr. Santarelli report to you with respect to whether or not Mr. Jensen was biased against you or INSLAW?

A. He thought that the evidence of his discussion with him, that there was no problem.

Q. Has Mr. Santarelli ever expressed any different view to you?

A. No. I was satisfied when he told me that and from time to time after that I would have an uneasy

feeling. I was reluctant even to mention it to Mr. Richardson because it seemed so improbable to me that no matter how competitive someone might have been, if they rise to the No. 2 job in the Justice Department, it is almost inconceivable to me that they would carry with them any of that former competitiveness.

Q. Did you ever ask Mr. Santarelli again after you discussed whether he found any evidence of bias from Mr. Jensen back in 1984, did you discuss the same question with Mr. Santarelli at other times?

A. One other time that I recall.

Q. What did Mr. Santarelli say?

A. He said he is perplexed.

Q. Perplexed by what?

A. By the evidence that we were uncovering in 1986 behavior, mystified by it.

Q. What evidence had you uncovered in 1986 that you didn't know in 1984 that purportedly demonstrates that Lowell Jensen was biased against INSLAW or yourself?

A. Well, one item is we had asked, through our attorneys, to have E. Bob Wallach inquire what the problem was and he reported back to our attorneys at

Dickstein Shapiro & Morin the following: You may think that Lowell Jensen has left the Department of Justice but he will always be involved in the INSLAW case. He has queried Ed Meese on INSLAW. The Department will never settle this case. The company should understand it is in a fight for its life.

Q. Now, E. Bob Wallach contacted who?

A. When we first contacted Mr. Wallach, he volunteered to contact Mr. Jensen, Judge Jensen with the intent of desensitizing, as he put it, Mr. Jensen so that he would then call Mr. Burns and Mr. Meese to tell them that Mr. Jensen just wanted them to do whatever they thought was the right thing to do and that he had no personal interest in how the case was resolved.

And he went out to San Francisco to try a case and when he came back, he delivered and paraphrased the message that I just gave you.

Q. Mr. Wallach met with Mr. Jensen?

A. I don't know.

Q. So you don't know what happened? Do you know who Mr. Wallach spoke to?

A. You know everything that I know now, Mr. Cooper.

Q. I just want to understand who you know that Mr. Wallach spoke to.

A. I think I have answered the question. He told me that, he told our attorneys what he intended to do and when he came back, he did not say to whom he had spoken. He just told the attorneys what his conclusions were.

Q. Were you present?

A. No.

Q. Have you ever met Mr. Wallach?

A. Never have met him.

Q. It was attorneys at Dickstein Shapiro?

A. That's correct.

Q. Who specifically was it who recounted this conversation?

(Counsel confers with the witness.)

THE WITNESS: Two attorneys at Dickstein told me about it, Mr. Ratiner and part of the conversation was recounted to me by Mr. Nannes.

BY MR. COOPER:

Q. Why was it that part was recounted by Mr. Nannes and presumably another part was recounted by Mr. Ratiner?

A. Part of it was considered so sensitive that it

wasn't going to be told to us.

Q. Which part was that?

A. The fact that Mr. Jensen is considered to be still involved in the INSLAW case while he is sitting on a federal bench.

Q. That is what Mr. Wallach reported?

A. That is what I read into the words that I have already recounted to you.

Q. Now, did you receive anything in writing from your attorneys that recounted that?

A. No.

Q. And I think you testified you have never spoken with Mr. Wallach about this matter?

A. That's right.

Q. And did your attorneys ever tell you if they knew who Mr. Wallach spoke to?

A. No, they did not. They told me that he did not indicate.

Q. Who he spoke to?

A. To whom he had spoken.

Q. That was one item of evidence that has been uncovered in 1986 that you referred to that changes what

you knew in 1984 and 1985. Is there anything else that has been uncovered that changes your view?

A. Some of it we have already talked about, the meeting with Mr. Jensen himself in 1985, in the summer of 1985.

Q. And there were the words that he used during that meeting about DAYLITE and his consideration of PROMIS?

A. Yes.

Q. Is there anything else that occurred at that meeting that is something that creates an impression in your mind that Mr. Jensen was biased?

A. It is both what occurred and what did not occur. I would have expected a Deputy Attorney General either to say to Mr. Richardson that we, the Department, disagree with your contentions on this matter, has looked into it or to express surprise at the contentions and promise to look into them. And it is the omission of either of those, combined with stating that, in effect, my software is better than their software, that certainly started me freshly getting concerned.

Q. Do you know whether or not Mr. Jensen made such

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

INSLAW, INC.,	)	
	)	
Debtor-in-Possession	)	
	)	
Plaintiff,	)	Bankr. Case No. 85-0070
	)	
v.	)	
	)	Adv. Proc. No. 86-0069
UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF JUSTICE,	)	
	)	Honorable George F. Bason, Jr.
	)	
Defendants.	)	
	)	

DEFENDANTS' ANSWERS AND OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES AND FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendants United States of America and the Department of Justice ("DOJ") assert below the following objections and answers to Inslaw's Third Set of Interrogatories and Fifth Request For Production of Documents served June 24, 1987.

Defendants incorporate by reference, as if fully set forth herein, each of the General Objections which were set forth in Defendants' Objection To Plaintiff's First Request For Documents dated December 23, 1986.

INTERROGATORY NO. 1:

Identify and describe in detail each and every communication, written or oral, between James Jenkins and Kenneth Cribs [sic] in or around December, 1985, relating and/or referring to INSLAW.

ANSWER TO INTERROGATORY NO. 1:

Mr. Cribb has no recollection of having any communication

with James Jenkins relating and/or referring to Inslaw, nor do DOJ records reflect any such communication.

INTERROGATORY NO. 2:

Identify and describe in detail each and every communication, written or oral, between Leonard Garment and Kenneth Cribs [sic] in May or June, 1985, relating and/or referring to INSLAW.

ANSWER TO INTERROGATORY NO. 2

Mr. Cribb has a faint recollection that at some period after February 1985 he discussed the Inslaw matter with Mr. Garment or another attorney who represented Inslaw. He has a general recollection that the call related to problems the company was having with a DOJ contract. He recalls referring the call to the DOJ Civil Division for resolution.

INTERROGATORY NO. 3:

Identify and describe in detail each and every communication, written or oral, between E. Robert Wallach and Edwin Meese since August, 1986, relating and/or referring to INSLAW including but not limited to any communication relating and/or referring to the October, 1986 Los Angeles Times article on the INSLAW bankruptcy and/or D. Lowell Jensen.

ANSWER TO INTERROGATORY NO. 3

Mr. Meese has no recollection of having any communication with E. Robert Wallach relating and/or referring to Inslaw, or the October, 1986 Los Angeles Times article on the Inslaw bankruptcy and/or D. Lowell Jensen, nor do DOJ records reflect that any such communication occurred.

INTERROGATORY NO. 4:

Identify and describe in detail each and every communication, written or oral, between E. Robert Wallach and Arnold Burns in or around August or September, 1986, relating and/or referring to INSLAW.

ANSWER TO INTERROGATORY NO. 4:

Mr. Burns has no recollection of having any communication with E. Robert Wallach relating and/or referring to Inslaw, nor do DOJ records reflect that any such communication occurred.

INTERROGATORY NO. 5:

Identify and describe in detail each and every communication written or oral, between D. Lowell Jensen and Edwin Meese relating and/or referring to INSLAW. This interrogatory is without limitation as to time.

ANSWER TO INTERROGATORY NO. 5:

Mr. Meese has only a general recollection of discussions where D. Lowell Jensen was present which concerned the Inslaw litigation and/or the types of automated data processing systems which were being considered for use within the DOJ. In those discussions, PROMIS and alternative systems to PROMIS were discussed, as well as other automated data processing systems.

INTERROGATORY NO. 6:

Identify and describe in detail each and every communication, written or oral, between Leonard Garment and Edwin Meese relating and/or referring to the October, 1986 Los Angeles Times article on the INSLAW bankruptcy and/or D. Lowell Jensen.

ANSWER TO INTERROGATORY NO. 6:

Mr. Meese has a general recollection of a conversation with Leonard Garment in which Mr. Garment mentioned that he discussed Inslaw with Arnold Burns. Mr. Meese does not recall any other conversations with Mr. Garment which related to Inslaw and/or Inslaw's allegations of bias concerning D. Lowell Jensen.

INTERROGATORY NO. 7:

Identify and describe in detail each and every communication, written or oral, between Los Angeles Times reporter William Farr and any agent, officer, attorney, employee, official, or other representative of the Department of Justice in or around June, 1986, relating and/or referring to INSLAW.

ANSWER TO INTERROGATORY NO. 7:

Mr. Farr telephoned Mr. C. Madison Brewer in June, 1986, for a comment regarding Inslaw's allegations that Mr. Brewer was biased against Inslaw; Mr. Brewer told Mr. Farr that he could not comment because the matter was in litigation.

Mr. Farr telephoned Amy L. Brown, Assistant Director of DOJ's Office of Public Affairs on several occasions. The first such conversation occurred sometime between August 25, 1986 and September 17, 1986. Mr. Farr did virtually all the talking in this conversation. He told Ms. Brown about his understanding of Inslaw's allegations that DOJ officials were biased against Inslaw. There was also a discussion during this conversation as to whether Messrs. Jensen and Brewer were named as defendants in Inslaw's law suit. Mr. Farr asked Ms. Brown whether DOJ wanted to comment on Inslaw's allegations. Ms. Brown subsequently told Mr. Farr that since the matter was in litigation DOJ would not

comment outside of DOJ statements made to the Senate Judiciary Committee, in court filings, and/or during court hearings. Ms. Brown referred Mr Farr to the letters of June 12, 1986, and June 18, 1986, which Mr. John Bolton, Assistant Attorney General for Legislative and Intergovernmental Affairs, sent to the Senate Judiciary Committee in response to questions that the Committee posed in connection with the confirmation proceedings for D. Lowell Jensen as United States District Judge. Ms. Brown recalls that she may have made available for pickup by Mr. Farr's associate in Washington, D.C., a copy of either or both letters.

On October 15, 1986, Mr. Farr called Ms. Brown when she was out of the office, and left a message. Ms. Brown does not recall if she returned the call, or if she did, the substance of the conversation.

On November 25, 1985, Mr. Farr called Ms. Brown and left a message. When Ms. Brown returned the call, Mr. Farr told her that the judge in the Inslaw bankruptcy case would be making a ruling on December 8, 1987. Mr. Farr told Ms. Brown that he would probably be writing a story at that time and wanted to be prepared. Mr. Farr asked for a copy of a biography of Mr. Brewer, and Ms. Brown recalls determining that DOJ did not maintain an official biography for Mr. Brewer. Ms. Brown recalls providing Mr. Farr with information regarding Mr. Jensen's dates of service at DOJ. Mr. Farr also asked Ms. Brown whether Mr. Brewer ever received an award for his work on the PROMIS project. Ms. Brown subsequently called Mr. Farr back and told him that she

was unable to confirm that Mr. Brewer had received such an award, and that it appeared he had not.

Mr. Farr also called Ms. Brown on December 18, 1986, December 29, 1986, and January 8, 1987, to inquire about when DOJ would be filing its answers to Inslaw's interrogatories and its answer to Inslaw's complaint. Ms. Brown does not recall whether she subsequently provided Mr. Farr copies of these court filings.

Patrick Korten, Deputy Director of DOJ's Office of Public Affairs has a general recollection of having been contacted by reporters regarding the Inslaw matter. However, he does not recall when the reporters called or if any of those reporters was Mr. Farr.

INTERROGATORY NO. 8:

Identify the author or authors of the document produced by Defendants in discovery in this litigation and bearing Bates No. 19866 (copy attached hereto), and describe in detail the circumstances of its preparation.

ANSWER TO INTERROGATORY NO 8:

Peter Videnieks and Kamal Rahal prepared the subject undated document in approximately November or December, 1982, when the contracting officer was considering terminating Inslaw's advance payment account as a result of Inslaw's breach of the advance payment account covenants in the Contract. Mr. Videnieks recalls that Mr. Rahal requested that the document be prepared so that he

could use it for briefing JMD officials regarding the possible consequences to Inslaw if the advance payment account were terminated.

CERTIFICATION

The undersigned has reviewed the foregoing answers to interrogatories and certifies that those answers are true and correct to the best of his/her knowledge.

Sworn to subject to perjury.

As to the answers to Interrogatories 1, 2, 3, 5, 6

Dated: 7-16-87 David M. McIntosh

DAVID M. MCINTOSH

As to the answers to Interrogatories 4 and 7:

Dated: July 13, 1987 Gregory S. Walden

GREGORY S. WALDEN

As to the answer to Interrogatory 7:

Dated: July 13, 1987 Amy L. Brown

AMY L. BROWN

As to the answer to Interrogatory 8:

Dated: 7/13/87 Peter Videnieks

PETER VIDENIEKS

DOCUMENT REQUEST NO. 1:

Each and every document comprising, referring to or relating to the communications sought to be identified in the foregoing Plaintiff's Third Set of Interrogatories to you.

RESPONSE TO DOCUMENT REQUEST NO 1:

Defendants will produce all non-privileged responsive documents which have not previously been produced to Inslaw.

DOCUMENT REQUEST NO. 2:

Each and every document in the possession, custody and control of the Tax Division of the United States Department of Justice which refers or relates in any way to William A. Hamilton, Nancy Hamilton or INSLAW, Inc.

OBJECTION TO DOCUMENT REQUEST NO. 2:

Defendants object to document request no. 2 because the documents sought have absolutely no relevance to the issues in this proceeding nor would they lead to the discovery of admissible evidence. Furthermore, the request is particularly inappropriate because any documents other than publicly available court filings which may be contained in the files of the DOJ Tax Division, which represents the IRS in court litigation, would almost certainly constitute privileged attorney client and attorney work product matter. Finally, to require DOJ counsel to search, copy and review the Tax Division's files at this time, particularly given the likely claims of privilege regarding those documents, would be burdensome in the extreme and would seriously prejudice counsel's ability to prepare for trial in this matter.

On July 14, 1987, the Court denied Inslaw's motion to compel regarding this document request.

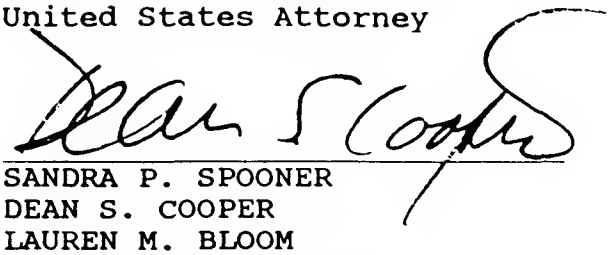
* * *

All of the above objections have been asserted by counsel.

Respectfully submitted,

RICHARD K. WILLARD
Assistant Attorney General

JOSEPH E. diGENOVA
United States Attorney



SANDRA P. SPOONER
DEAN S. COOPER
LAUREN M. BLOOM
Department of Justice
Civil Division
Commercial Litigation Branch
Box 875 Ben Franklin Station
Washington, D.C. 20044
(202) 724-8418

Attorneys for Defendants

Dated: July 16, 1987

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 1987, a copy of the foregoing Defendants' Answers And Objections To Plaintiff's Third Set Of Interrogatories And Fifth Request For Production Of Documents was served by the manner designated below to:

Charles R. Work (Hand Delivered)
Michael E. Friedlander
McDermott, Will & Emery
1850 K Street, N.W.
Suite 500
Washington, D.C. 20006

Philip L. Kellogg (Hand Delivered)
James L. Lyons
Kellogg, Williams & Lyons
1275 K Street, N.W.
Suite 825
Washington, D.C. 20005

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 12, 1986

Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

At yesterday's hearing on the nomination of D. Lowell Jensen to be a United States District Judge, you asked Mr. Jensen about certain matters pertaining to litigation pending between INSLAW, Inc. and the United States.

INSLAW was a contractor with the Department of Justice. It has asserted various claims for additional funds allegedly due to it under its contract. Those claims are presently pending in administrative litigation before a Board of Contract Appeals. The claims are disputed by the United States, and the United States has asserted counterclaims against INSLAW.

In February 1985, INSLAW filed in the Bankruptcy Court for the District of Columbia a petition in bankruptcy under Chapter 11 of the Bankruptcy Code. Those proceedings are also still pending. Within the past several days, INSLAW filed in the Bankruptcy Court a complaint seeking monetary and other relief. The only defendants are the United States and the Department of Justice. As is true of the Board of Contract Appeals litigation, Mr. Jensen is not a defendant and no relief is sought against him. I am informed by our attorneys responsible for the bankruptcy litigation that the issues arise from the Government's contract with INSLAW and overlap in substantial measure with the issues presented in the Board of Contract Appeals litigation.

As requested by you and members of your staff, Mr. Jensen has reviewed his limited dealings with INSLAW and its representatives. He is fully satisfied with the propriety of his actions. At INSLAW's request, Mr. Jensen met with representatives of INSLAW. At those meetings, he was asked to entertain unsolicited proposals for contracts between INSLAW and the Department, and to intercede personally in negotiations between Department attorneys and attorneys for INSLAW. Mr. Jensen declined to do so. The Department attorneys responsible

for the negotiations and for the litigation confirm that Mr. Jensen neither has been involved in, nor has sought to influence, their handling of these matters.

I hope that this is responsive to your questions.

Sincerely,

John R. Bolton
Assistant Attorney General

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington D C 20530

June 18, 1986

Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

I have asked Deputy Attorney General D. Lowell Jensen to prepare responses to the questions set forth in your letter of today concerning the Department's contract with INSLAW, Inc. As I have mentioned to you previously, the Department's disputes with INSLAW regarding this contract are in litigation before the Board of Contract Appeals and the Bankruptcy Court.

We have responded fully to your inquiries regarding the INSLAW matter. We rely upon you, of course, to discourage any use of the nomination process as a tool for discovery in this litigation.

Sincerely,

John R. Bolton
Assistant Attorney General

Enclosures

1. What was your decision-making and supervisory responsibility over the Department of Justice contract with Inslaw, Inc.?

The INSLAW contract that you have inquired about was executed and administered by the Justice Management Division for the Executive Office for United States Attorneys (EOUSA). The contract involved the installation of computer software for case management in the United States Attorneys' Offices. I am informed that some of the offices were to utilize the software on computers and approximately 70 offices were to utilize the software on word processing equipment.

As the Assistant Attorney General for the Criminal Division, I may have participated in discussions and meetings in which the EOUSA's case management system was discussed. When I became the Associate Attorney General in July, 1983, I was responsible, among other things, for providing overall supervision and direction to the Executive Office for United States Attorneys. See 28 CFR §0.19(a). This responsibility continued and expanded to include overall supervision of the Justice Management and Civil Divisions when I became Deputy Attorney General in May, 1985. See 28 CFR §0.15(b).

While I was the Associate Attorney General, the contracting officer for the INSLAW contract made the decision to terminate the word processing portion of the INSLAW contract. I did not attempt to change this decision because I was convinced that the termination was justified and in the best interests of the government. For your information, I am told that at the time of the termination, the Department had expended approximately 75 percent of the target costs of the contract, and the software had

been installed in only four word processing sites.

I understand that there are presently numerous claims and counterclaims between INSLAW and the Department arising from the termination and other aspects of the contract. These matters are being handled by lawyers in the Justice Management and Civil Divisions. I have been briefed periodically about the status of the negotiations and litigation involving INSLAW, but I have not intervened into either the negotiations or the litigation.

2. a. Did you hire or were you involved in the Department of Justice decision to hire Mr. C. Madison Brewer, III as program manager for the Inslaw contract?

I was not involved in hiring C. Madison Brewer.

b. When did you receive information that Mr. Brewer's former employer, William Hamilton, the owner of Inslaw, had fired Mr. Brewer for cause?

I do not recall when I first learned that Mr. Brewer had previously worked for the Institute for Law and Social Research. It is likely that I was first given this information by INSLAW after problems had developed under the contract. I am presently aware that Mr. Hamilton claims that he fired Mr. Brewer for cause, but I do not know whether this was in fact the case.

c. What were your supervisory responsibilities over Mr. Brewer?

My supervisory responsibilities over Mr. Brewer derived from my supervisory responsibilities over EOUSA. These are described in my answer to the previous question.

3. What were your affirmative responsibilities to Inslaw as the Department of Justice chief policy maker to implement the Inslaw contract?

My responsibilities were to protect the interests of the United States Government and its taxpayers. To the extent that INSLAW asked me to meet with its representatives and to consider its requests, I did so as elsewhere described in these answers.

4. Did you take any affirmative steps to remedy the perceived or actual conflict between Mr. Brewer's relationship with Inslaw and the implementation of the Inslaw contract?

The Department of Justice does not concede that there was a conflict between Mr. Brewer's relationship with INSLAW and the Department's implementation of the INSLAW contract. I am aware that INSLAW claims that Mr. Brewer was biased against them, but I have never seen any evidence that any such bias, if it exists, has affected our handling of the INSLAW contract. For your information, neither the contracting officer for the INSLAW contract, nor the lawyers assigned to the litigation and settlement negotiations, report to Mr. Brewer or EOUSA.

5. a. Did your staff director, Jay Stevens, conduct an investigation into the Department of Justice implementation of the Inslaw contract?

b. What were the findings of that investigation?

c. Was any action taken as a result of that investigation?

As you have been previously informed, I met at INSLAW's request with its representatives. At those meetings, I was asked to entertain INSLAW's proposals for contracts between INSLAW and the Department, and to intercede personally in negotiations between Department attorneys and attorneys for INSLAW.

At my request, Mr. Stevens met with lawyers from the Justice Management Division and the Civil Division to discuss INSLAW's requests. Mr. Stevens advised me that matters were being handled competently and professionally by the assigned attorneys and that there was no occasion for me to intercede personally. My understanding is that Mr. Stevens also advised INSLAW's representatives of these conclusions.

6. Do you have any personal or financial interest in the Dalite case tracking system?

DALITE is a case management system that was developed for the Alameda County District Attorney's Office when I was there. The system was developed with funds provided by the County and by the Department of Justice, Law Enforcement Assistance Administration. The system is unique to that office. I have no financial or other personal interest in DALITE.

MEMORANDUM OF CALL — Previous editions usable

TO: Amy

☐ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Bill Farr

OF (Organization) LA Times

☑ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

(213) 972-4706

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

re: you know

RECEIVED BY Arlene | DATE 12/29 | TIME 3:55

63-110 NSN 7540-00-634-4018 ★U.S.GPO:1986-0-491-247/20042

STANDARD FORM 63 (Rev. 8-81) Prescribed by GSA FPMR (41 CFR) 101—11.6

MEMORANDUM OF CALL — Previous editions usable

TO: AB

☑ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Bill Farr

OF (Organization) LAT

☑ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

818-446-5329

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

Judge George Bason (B-rupcy Judge)

MESSAGE

Dec. 8 ruling on Inslaw bankruptcy ~~[illegible]~~ case.

Biographical info on Madison Brewer.

~~[illegible]~~ Did he receive a bonus in '85 fo. Inslaw contract.

RECEIVED BY (15,000 large) A | DATE 11-25 | TIME 1:45

63-110 NSN 7540-00-634-4018 ★U.S.GPO:1986-0-491-247/20040

STANDARD FORM 63 (Rev. 8-81) Prescribed by GSA FPMR (41 CFR) 101—11.6

MEMORANDUM OF CALL — Previous editions usable

TO: AB

☑ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Bill Farr

OF (Organization) LAT

☑ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

~~[illegible]~~ 818-446-5379

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

has talked to you about this before

Also, Call Mr. Candler 893-4650

RECEIVED BY [illegible] | DATE 12-18 | TIME 11:30

63-110 NSN 7540-00-634-4018 ★U.S.GPO:1986-0-491-247/20042

STANDARD FORM 63 (Rev. 8-81) Prescribed by GSA

MEMORANDUM OF CALL — Previous editions usable

TO: AB

☑ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Bill Farr

OF (Organization) LAT

☑ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

213-972-4706

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY D | DATE 10-15 | TIME 3:25

63-110 NSN 7540-00-634-4018 ★U.S.GPO:1985-0-491-247/20040

STANDARD FORM 63 (Rev. 8-81) Prescribed by GSA FPMR (41 CFR) 101—11.6

LEGAL TIMES
LAW AND LOBBYING IN THE NATION'S CAPITAL
MONDAY, OCTOBER 12, 1987 • VOL. X, NO. 19 • $4.00

Messy Inslaw Fight Engulfs Dickstein

Former Client Claims Cronyism by Firm Led to Bum Advice

BY AARON FREIWALD

A Washington, D.C.-based software company's stormy battle with the Justice Department over a canceled $10 million contract now threatens to engulf a prestigious D.C. law firm and several of its prominent partners.

Inslaw Inc., once under contract to install case-tracking systems in U.S. attorneys' offices, on Sept. 28 won a major victory when a federal bankruptcy judge here held that the Justice Department used "trickery, fraud, and deceit" to force Inslaw into bankruptcy.

The judge, George Bason Jr., blasted unnamed high-ranking department officials for "an institutional decision made at the highest level simply to ignore serious questions of ethical impropriety."

Now, D.C.'s Dickstein, Shapiro & Morin, which in June 1986 brought the initial Bankruptcy Court complaint against the Justice Department on behalf of Inslaw, faces harsh accusations—so far unsubstantiated—from its former client that its representation was compromised by the firm's political ties to the Justice Department and Attorney General Edwin Meese III.

Inslaw's president, William Hamilton, charges in interviews with *Legal Times* that Dickstein partner and Reagan administration faithful Leonard Garment forced Inslaw's lead counsel, Leigh Ratiner, who had pursued the case vigorously, to withdraw from the firm partnership. The firm denies the charges.


William Hamilton

It must be stated, again, that Hamilton's charges are unsubstantiated. They are significant because they threaten to drag Dickstein and Meese deeper into the Inslaw controversy. The charges have not been incorporated in any court filing.

Hamilton alleges that Garment, who has represented Meese and is close to other top Reagan administration officials, thwarted Ratiner in order to shield Justice Department officials from the unflattering allegations raised by Hamilton in Inslaw's suit.

Hamilton also complains that Dickstein was not working in his company's best interests when lawyers earlier this year strongly urged Inslaw to settle out of court its dispute against the Justice Department.

Hamilton rejected that advice, sought

SEE **INSLAW**, PAGE 13

Dickstein, Shapiro Becomes Entangled in Inslaw Imbroglio

INSLAW FROM PAGE 1

new counsel, and ultimately prevailed in court.

"Dickstein should have gracefully withdrawn from representing us because of the potential embarrassment over their friendship with Attorney General Meese," Hamilton says. "That's why there are conflict of interest rules."

In particular, Hamilton says Garment tried to protect longtime Meese friend, former Deputy Attorney General D. Lowell Jensen, who was implicated in Inslaw's lawsuit against the Justice Department.

Jensen, now a U.S. district judge in San Francisco, has repeatedly denied allegations that he sought to force Inslaw into bankruptcy and that he was motivated by a longstanding personal grudge against Hamilton and Inslaw. In the mid-1970s, Jensen, then district attorney in Alameda County, Calif., developed a rival case-management software system. He could not be reached for comment.

Dickstein, meanwhile, has filed a creditor's claim in Bankruptcy Court seeking $464,000 for its Inslaw work. Hamilton could raise his conflict-of-interest charges in an effort to block Dickstein's claim.

But Hamilton says a fee dispute with Dickstein is not behind his charges against the firm.

Frederick Lowther, Dickstein's managing partner, agrees that Hamilton's complaints are probably not motivated by the outstanding bill.

What continues to fuel Hamilton's ire at Dickstein is his belief that after Ratiner's departure from the firm, Dickstein failed to pursue Inslaw's case vigorously and then pressed Inslaw to reach an out-of-court settlement with the Justice Department for far less than Hamilton thought Inslaw could win in court. In both instances, Hamilton believes that Dickstein's connections to Meese and the Justice Department may have contributed to what Hamilton and other Inslaw lawyers describe as Dickstein's lackluster representation of the company.

"Inslaw needs to have a full accounting from Dickstein, Shapiro to determine whether extraneous concerns affected our representation," Hamilton offers.

Bankruptcy Judge Bason awarded Inslaw as yet unspecified damages and all of its attorney fees. A separate hearing is scheduled to consider punitive damages. Hamilton has calculated that the award will be at least $5.4 million, even if the judge does not levy punitive damages. The Justice Department has said it will appeal Bason's ruling.

At Dickstein, Garment and other firm leaders emphatically deny having done anything that would have hurt the interests of their former client or have violated conflict-of-interest rules. To the contrary, they argue that Dickstein provided the crucial groundwork on the case that led to Inslaw's court victory.

Ratiner's withdrawal from the firm, says Dickstein's Lowther, was in no way related to the Inslaw case. "That decision was made by Leigh and by us over a long period of time," says Lowther, declining to elaborate. Ratiner formally left the firm in May.

Garment, a member of Dickstein's management committee, also refuses to discuss why Ratiner left the firm.

"There's a partnership contract attached to his withdrawal with a negative covenant on it," says Garment, who describes the covenant as "an agreement that neither side will say publicly things about the other side."

But Garment flatly denies that Dickstein partners forced Ratiner out because of Inslaw. "That's not correct," he says of Hamilton's accusation.

Ratiner, now president of LSR Enterprises, an Annandale, Va.-based company that makes filing systems for lawyers, declines to discuss details of his departure from Dickstein.

Pressed to respond to Hamilton's claim that Garment forced him out because of his work for Inslaw, Ratiner says only, "I don't have any evidence to support that theory."

But Inslaw President Hamilton insists that Garment engineered Ratiner's departure because of Garment's sensitivity to the bad publicity the Justice Department was starting to receive over the Inslaw controversy.

Three other lawyers currently involved in different aspects of the Inslaw case—none of them at Dickstein—say that Ratiner complained to them that Garment had instigated Ratiner's departure from Dickstein because of his aggressive tactics in representing Inslaw.

Latest Chapter in a Bitter Saga

The nasty feud between Dickstein and Inslaw is only the latest installment in a bitter saga in which the integrity of high-ranking officials has been called into question.

Inslaw, founded by Hamilton in 1973 as a non-profit entity, went for-profit in 1981 after the source of its federal funding, the Law Enforcement Assistance Administration (LEAA), was cut from the Reagan budget. It prospered for a time, particularly after landing in 1982 a $10 million contract to install case-tracking software, known as PROMIS, in the 94 U.S. attorneys' offices. At the time, the contract was the largest ever awarded by the Justice Department.

The Justice Department, however, later suspended payments, claiming Inslaw had failed to meet its contract obligations. With the company and the Justice Department engtangled in a protracted contract dispute, Inslaw in February 1985 filed for bankruptcy.

Dickstein was hardly the first major firm to go to bat for Hamilton. His dispute with the Justice Department has attracted a coterie of powerful Washington lawyers. Former Attorney General Elliot Richardson, a partner in the D.C. office of Milbank, Tweed, Hadley & McCloy, and Donald Santarelli, a well-connected Republican lawyer and partner with D.C.'s Santarelli, Smith, Kraut & Carroccio, have advised Inslaw in its dealings with the Justice Department.

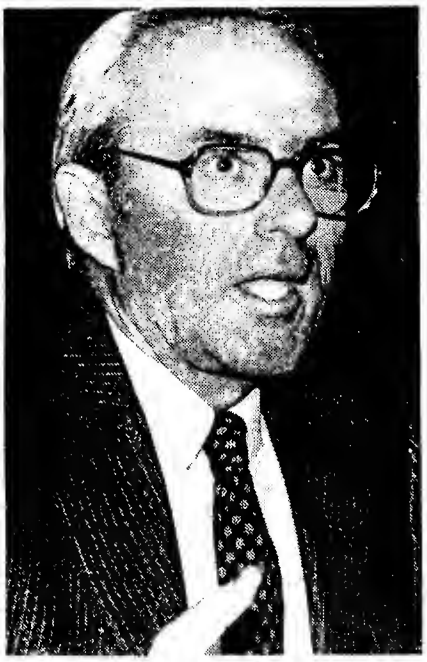
Harvey Sherzer, first as a partner with San Francisco's Pettit & Martin and then with D.C.'s Howrey & Simon, provided Inslaw's outside corporate counsel, and, through the end of 1985, was chief negotiator for Inslaw in its complex contract dispute with the Justice Department.

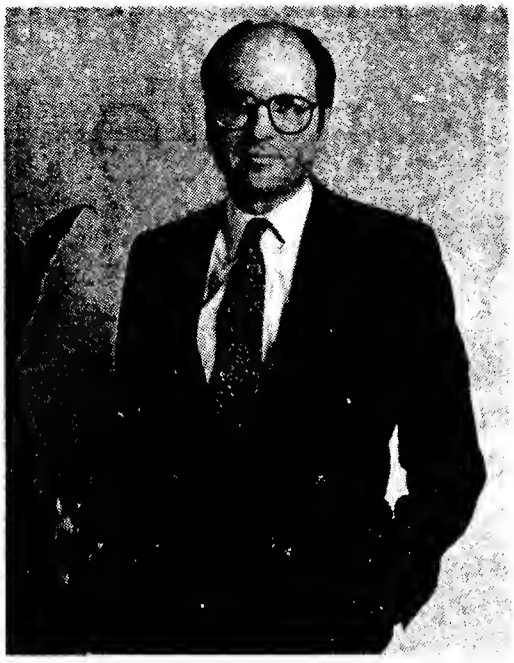
Dickstein came into the picture when Inslaw decided to seek litigation counsel after negotiations between Inslaw and the department broke down in late 1985. Despite its talent for hardball litigation, Howrey & Simon was out of the running: Inslaw by then had filed for bankruptcy and could not come up with the legal fees already owed Howrey & Simon—around $75,000, according to a source at the firm.

Howrey & Simon was reluctant to take on a contingent-fee case with a company in bankruptcy, despite Sherzer's good relations with Hamilton, say several Inslaw lawyers.

"There is a certain reticence on the part of some firms to litigate with bankrupt clients," says Charles Docter, of D.C.'s Docter, Docter & Salus, Inslaw's current bankruptcy counsel.

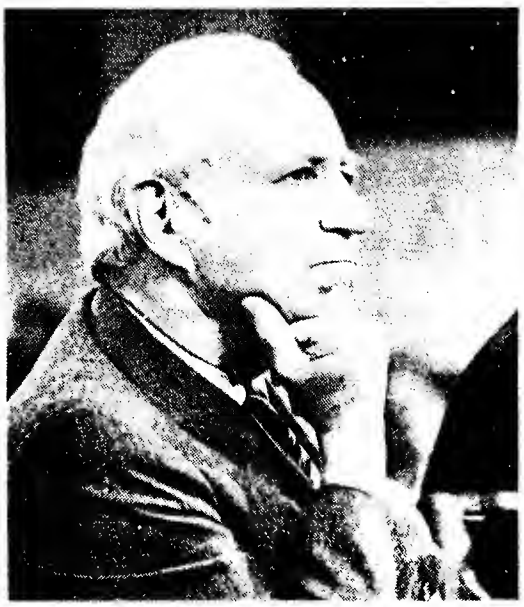
Dickstein, Shapiro Becomes Entangled in Inslaw Imbroglio





Lawyers in the Inslaw Fight

The cast in Inslaw's messy battle with the Justice Department and Dickstein, Shapiro include, counterclockwise from above: Charles Work, D. Lowell Jensen, Leigh Ratiner, Leonard Garment, and Elliot Richardson.



In January 1986, Elliot Richardson brought Dickstein's Ratiner to the defense of Inslaw. Ratiner—a Dickstein partner since 1977, who knew Richardson from their days as negotiators on the Law of the Sea Treaty—said that he would take the case despite Inslaw's financial condition. A retainer agreement was signed Feb. 5, 1986.

Right Man for the Job

In many ways, Ratiner, 48, was the ideal lawyer for the job: aggressive, smart, prone to pounding his fist on the table to underline a point.

But Ratiner also had a reputation at Dickstein as something of a maverick, a man with a sizable ego and few close friends within the firm.

An April 22, 1982, profile in *The Washington Post* introduced Ratiner, on leave from Dickstein so that he could return to the Law of the Sea talks, as a man who "drives three motorcycles and a sportscar, wears a gold chain around his neck, and answers to the nickname 'Black Prince.' "

Garment, the former White House Counsel to President Richard Nixon, was livid over the 1982 *Post* profile of Ratiner, according to a Dickstein source, because the "Black Prince" sobriquet did not fit the image Garment was trying to build for his firm.

But while bad blood may have developed between Garment and Ratiner, in 1982 Garment agreed to help Ratiner with his new client, Inslaw. According to Garment, Hamilton, and Justice Department officials, Garment arranged for Ratiner to meet with Stuart Schiffer, a deputy to Richard Willard, the assistant attorney general for the Civil Division.

Ratiner, accompanied by junior partner Michael Nannes, showed Schiffer the Inslaw complaint, which was ready for filing in U.S. Bankruptcy Court and which alleged that the Justice Department had stolen Inslaw's PROMIS software after canceling Inslaw's government contract.

"We did not receive any reaction [from Schiffer] in the sense of, 'Please don't file this complaint,' " recalls Nannes. Dickstein filed Inslaw's complaint the day after the Schiffer meeting, June 9, 1986.

After a summer of exchanging motions in court, Hamilton says, E. Robert Wal-

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lach, a Dickstein lawyer entangled in the Wedtech affair, appeared on the scene.

With Garment's assistance, Wallach had joined Dickstein as of counsel in early August 1986. Ratiner, who knew Wallach was close friends with Meese, asked if Wallach could impress Inslaw's position on senior Justice Department officials, says Hamilton.

Wallach vowed to speak to Jensen—who had already become a federal judge in San Francisco—and then to take Inslaw's case to Meese and to Jensen's replacement as No. 2 in the department, Arnold Burns, Hamilton states in a deposition taken by Justice Department lawyers as part of the bankruptcy proceeding.

After vacationing with Meese in Jackson Hole, Wyo., and taking a brief trip to Europe, Wallach met on Sept. 25 with Ratiner and Nannes about Inslaw, according to Hamilton.

At that meeting, Wallach related that the Justice Department would not settle with Inslaw, say Hamilton and Nannes.

Wallach also told Ratiner, according to Hamilton, that Jensen would always be involved in the Inslaw dispute, even as a judge in San Francisco.

Nannes says he does not know to whom Wallach spoke or on what basis he formed this conclusion about the Justice Department's posture. But Nannes says he never challenged Wallach's assessment because it made sense at that time.

"We felt we were going to have to slug it out on the [Justice Department's] motion to dismiss, before a favorable settlement could be reached," says Nannes.

Wallach, reached last week at his San Francisco law office, denied any involvement. "I did not talk to Arnie Burns. I did not talk to Lowell Jensen. And I do not have any recollection of Inslaw at all," Wallach said.

In Justice Department responses to Inslaw interrogatories last summer, Burns and Meese say they have no recollection of conversations with Wallach relating to Inslaw.

Despite Wallach's conclusion that the Justice Department was not inclined to settle with Inslaw, Hamilton says, Dickstein lawyers subsequently pressed on several occasions for a settlement along lines Hamilton says were highly unfavorable to Inslaw.

On Jan. 15, 1987, Nannes asked Hamilton to sign over authority for Dickstein to negotiate on behalf of Inslaw. Nannes proposed seeking $1 million—of which nearly half would have gone to cover Dickstein's fees—and a stipulation from the Justice Department that Inslaw owned the proprietary rights to the contested PROMIS software.

Hamilton rejected the settlement proposal because, he says, the $1 million would have barely covered attorney fees and would not have begun to compensate Inslaw for the use by Justice of the software throughout the dispute. Within days, he sought out new representation, at the D.C. office of Chicago's McDermott, Will & Emery, where partner Charles Work took over the case and continues as Inslaw's lead counsel. Work brought in D.C.'s Kellogg, Williams & Lyons as co-counsel.

"Dickstein said either you give us authority to settle at this ridiculously low level or we will seek to withdraw," says Work. Hamilton's response, says Work, was "Don't bother."

Garment's role in the case remains a source of controversy because of his close ties to Meese, who has not recused himself from the Inslaw case, according to Amelia Brown, a department spokeswoman. Meese and Jensen are also close personal friends.

A Justice Department response to an Inslaw interrogatory last summer reveals that Meese and Garment conferred by telephone about Inslaw at least once in the fall of 1986. This was after an article in *The Los Angeles Times* spotlighted Inslaw's allegations against Jensen and the department. Garment also spoke with Deputy Attorney General Arnold Burns, the interrogatory reveals.

But, says Hamilton, neither he nor Ratiner was ever informed of Garment's contacts.

"I think it's amazing that it was never revealed to the client," says Work, Inslaw's current lead counsel. "Sometimes things slip, but not something like that," he adds.

Garment acknowledges that he spoke to Burns, but he recalled the Meese conversation only after being told of the response by the Justice Department to the Inslaw interrogatory. "Maybe I talked to him, I don't know. I talk to a lot of people," says Garment.

"It seemed to me it was a case that had some merits and that they [the Justice Department] should look into the facts and try to settle it," Garment adds.

But Hamilton believes Garment's conversation with Meese may have sparked a decision by Dickstein's leaders to pursue his claims less vigorously. Dickstein's managing partner Lowther says this claim is ridiculous.

"The notion that we were involved in a highly charged political situation is just wrong," Lowther says. Besides, he adds, "This firm didn't view this as an unusual case, [and] we're often in controversial cases with the Justice Department."

But Hamilton claims that after Ratiner ceased playing an active role in the case, Dickstein lost interest in pursuing Inslaw's litigation.

Hamilton says, for example, that Lowther promised at a Nov. 21, 1986, meeting to provide senior litigation counsel to replace Ratiner on the case. This never happened.

Work, a former president of the D.C. Bar, says the Dickstein team, short the active involvement of a senior attorney, was too inexperienced to handle the case.

"They were talented younger lawyers," says Work, "but Dickstein representatives acknowledged to us at one point that none of them were first chair material for this case."

Lowther defends the firm's decision to stick with the legal team it had already assembled: Nannes; associate Ronald Perkowski; and Richard Conway, now a partner in the firm's Vienna, Va., office, who had a limited role in the case.

Had Dickstein stayed with Inslaw into trial, the firm "would have committed the resources to do it," says Lowther, "but we don't have any clients where I devote nine lawyers early on, especially a client in bankruptcy."

Moreover, adds Lowther, "We didn't view [Ratiner's] departure as a major obstacle to the case."

Just as Dickstein maintains that Ratiner's departure from the firm—and his leaving the Inslaw case—had nothing to do with Inslaw, Lowther argues that the firm's decision not to continue its representation of Inslaw into trial was reasonable and entirely defensible.

Lowther says Dickstein fulfilled its obligation to Inslaw, first by drafting a novel complaint, then by establishing Inslaw's right to action in Bankruptcy Court and by blocking the Justice Department's motion to dismiss; Judge Bason denied that motion last December.

"If you look at the retainer agreement," adds Lowther, "we agreed to take the case up to trial, and then we reserved our right

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to decide [whether to continue on through trial]."

Junior partner Nannes says the decision not to continue representing Inslaw came some time in early January of this year, when "the relationship was deteriorating." Both Nannes and Lowther decline to elaborate.

Hamilton counters that Dickstein decided not to pursue the Inslaw case even before lawyers had a chance to examine fully Justice Department documents.

"On the eve of finally being able to see the documents [in early January], they came to us and told us it was time to settle," says Hamilton.

Nannes concedes: "No one can say we took the case all the way through discovery." Yet he maintains that Dickstein lawyers did conduct an "extensive" examination of the "roomful of documents" the Justice Department released in discovery. "We certainly didn't skimp on resources in getting ready for trial," Lowther adds.

But Work contends that he had to muster a team of lawyers to replace Dickstein to take 45 depositions before trial; the trial date was postponed to July 20 of this year.

The ever-critical Hamilton is now more than happy with Work and his current legal team. Judge Bason's September ruling granted Inslaw practically everything it asked for, including attorney fees, which Hamilton estimates total $1.5 million, including Dickstein's $464,000 claim. As vindication, Hamilton cites the unusually harsh criticism of the Justice Department that is contained in Judge Bason's ruling.

Hamilton says he would have been denied such vindication if he had followed Dickstein's advice to settle nine months ago.

"We were stunned," says Hamilton of Dickstein's final settlement proposal. "We were left, a company in bankruptcy, to find new counsel right in the middle of litigation." □

FEDERAL COMPUTER WEEK
THE NEWSPAPER FOR SYSTEMS DECISION MAKERS IN GOVERNMENT

Bob Brewin

OCT 13, 1987

MS BRUCE -

See Meese story attached.

Could we talk?

Bob Brewin

876-5119

3110 Fairview Park Drive, Suite 1040, Falls Church, VA 22042

1-12-88

Rick -

This is re: Iraqgate matter referred to you as 12/21. Add this to file. I never called reptr.

RGB

VOL. 1 OCTOBER 12, 1987 NO. 29

FEDERAL COMPUTER WEEK

THE NEWSPAPER FOR SYSTEMS DECISION MAKERS IN GOVERNMENT

INFORMIX'S LAURA KING says her company plans to embrace Ada and Unix environments. /37

SEI Method Assesses Vendors

By GARY H. ANTHES

The Software Engineering Institute of Carnegie Mellon University has released its guidelines and procedures for assessing the software development capabilities of defense contractors.

The assessment method, which was developed at the request of the Air Force and with the assistance of The Mitre Corp., may be used by Pentagon procurement officers "either in the pre-solicitation qualification process, in the formal source selection process or both," according to the document released by the institute.

The assessment measures take the form of a series of questions to be answered by would-be contractors

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Justice Awards Contract To Meese Associate

By PAUL McCLOSKEY and BOB BREWIN

The Justice Department has awarded Hadron Inc. a contract valued at $40 million for automated litigation support services. The contract poses some questions of propriety for the Fairfax, Va.-based company, whose chief stockholder is a long-time government and business associate of U.S. Attorney General Edwin Meese.

The five-year deal calls for a Hadron subsidiary, Acumenics Research and Technology Inc., to supply Justice's Land and Natural Resources Division with services from the organization of case materials to the design of computerized data bases for document retrieval.

Hadron's largest stockholder is Dr. Earl Brian, a venture capitalist who served with Meese as health and welfare secretary in Reagan's California gubernatorial Cabinet until 1975. Brian's undisclosed business dealings with Meese imperiled the latter's 1984 nomination as attorney general. Until acquired by Hadron in 1983, Acumenics was qualified under the Small Business Administration's 8(a) minority business program.

Acumenics president Ronald Yokely said the company first was awarded a DOJ 8(a) contract for automated litigation support services in 1979. In 1983, it lost its 8(a) eligibility after being acquired by Hadron but won a four-year competitively bid contract to supply Justice's Land and Natural Resources Division the same services.

The new contract, which officials said was also awarded under competitive terms, is essentially a continuation of the contract let in 1983. It runs for one year, with an option to renew for another four years.

Yokely said that "there is no connection" linking Brian's association with the attorney general to the company's DOJ contract. "There was nothing then, and there's nothing now," he said, referring to 1984 reports that Meese failed to disclose a loan to Biotech Capital Corp., a company controlled by Brian.

An Acumenics competitor for the 1983 contract, who declined to be named, said his company no longer bids on DOJ contracts because, he said, "they have the screwiest procurement policies of any agency I have ever dealt with. Their procurement practices stink."

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JANET REEVES

Seismographic Monitoring
Bruce Presgrave calls the National Earthquake Information Center "the world's earthquake library."

System Detects Quakes' First Rumblings

By BOB BREWIN

For years, scientists have predicted that a major earthquake will occur soon along the nation's West Coast. To be as prepared as possible for that event and other quakes around the world, the National Earthquake Information Center in Golden, Colo., monitors the earth's shrugs 24 hours a day, collecting and analyzing seismic data.

At 8:47 a.m. on Oct. 1 when an alarm sounded at NEIC, geophysicists working at the U.S. Geological Survey unit knew it signaled a potentially damaging earthquake. At that moment, however, they knew neither its exact location nor its intensity. They quickly checked their seismographs, which had already begun to trace the shock on both paper and film.

As the pens continued to record the action of the quake, scientists fed raw data from the seismographs into the center's Digital Equipment Corp. VAX 1180.

Within 15 minutes after that bell sounded, the geophysicists pinpointed the quake using a Fortran program called, appropriately enough, Quickquake. Centered near Whittier, Calif., about 10 miles southeast of

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► Do software development first-line managers sign off on their schedules and cost estimates?

► Are design errors projected and compared to actuals?

► Are automated tools used to analyze software complexity?

"Not all assessment questions need be answered affirmatively for an organization to be considered to have a modern software engineering capability," according to the document.

An addendum to the document also contains suggested questions designed to assess the experience level of the contractor's personnel. The questions ask for years of systems development experience of the personnel, their computer science and related degrees and the size of the firm's software development projects as measured by lines of computer code.

By weighting and scoring the questions, contractors are assigned positions in a two-dimensional matrix. One axis indicates "level of process maturity," from "initial" (ill-defined procedures and controls) to "optimized" (high degree of control and sophistication). The other axis indicates whether the contractor's software development technologies are deemed to be effective.

Training Managers

W.L. Sweet, who managed the development of the assessment method, said the SEI is training Defense Department procurement officers in its use now. They will then train their own assessment teams, and Sweet expects to see the procedures in use sometime after the first of the year.

"I want to stress that the guidelines are not to be unilaterally imposed on contractors. Procurement officers are to use them only when appropriate and in ways appropriate to individual procurements," Sweet said.

Sweet said defense contractors worked closely with the SEI in developing the assessment measures and procedures, and the document just released reflects comments from a mailing to 400 companies and federal officials. An updated version will be issued in the spring, he said.

Although developed at the request of the Defense Department, the assessment methods are just as applicable to civilian agencies, Sweet said.

"We don't want to increase the burden on industry in the procurement process," Sweet said. "It's already burdensome enough. The idea is not to work harder but to work smarter." ◄

JUSTICE,

FROM PAGE 1

He said after losing the 1983 contract to Acumenics, "we took a look at their bid compared to ours, and it was about a $1.5 million over ours."

He called the contract a "mixed bag" at various terms, including some fixed price, some cost reimbursable and some labor costs." He added that his company had "been deemed technically competitive and among the best of the bidders."

Martin Erim, president of another automated legal services firm, said that his company also does not bother to bid on Justice contracts any more "because of the cast of characters involved. The appeal has been lost for us because of the minority set-asides."

Joseph Krovisky, a Justice Department spokesman, said DOJ would not comment on the situation.

Meese has come under repeated scrutiny while attorney general as the number of contracts awarded to his associates and business partners has grown.

During confirmation hearings for the post of attorney general, Meese acknowledged that his family borrowed $15,000 from a former Reagan gubernatorial aide to purchase stock in Biotech, Brian's personal business vehicle. The aide later became Meese's White House deputy.

Meese said his failure to list the loan in his annual financial disclosure statements to the White House was "inadvertent." However, the 1980 loan was not disclosed until March 1984, when it was reported by *The Washington Post*.

Following a six-month investigation, an independent counsel concluded there was no basis on which to prosecute Meese for violation of federal criminal statutes.

At about the same time, Sen. Strom Thurmond (R-S.C.), chairman of the Senate Judiciary Committee, questioned whether Biotech received favorable treatment in obtaining a $5 million federal loan guarantee from the Small Business Administration, despite an agency moratorium on such loans.

Senate Judiciary Committee staff would not comment on the latest Brian/Meese connection but said they would be "very interested" in looking at new facts. ◄

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CHARLES R. WORK
202/778-8030

January 21, 1988

Carol Bruce, Esq.
Office of Independent Counsel
1111 18th Street, N.W., Suite 500
Washington, D.C. 20036

BY HAND

Dear Carol:

In light of the recent press accounts about the divested regional operating companies and Attorney General Meese, I thought you might find of possible interest the enclosed request which has been filed in the U.S. Bankruptcy Court for authority to conduct discovery relating to AT&T and its possible collaboration in early 1985 with the Department of Justice against INSLAW.

Sincerely,

Charles R. Work

CRW:lg
Encl.

cc: Rick Simpson, Esq. (w/encl.)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
INSLAW, INC.,	)	**Case No. 85-00070**
Debtor,	)	**(Chapter 11)**

APPLICATION FOR AN ORDER AUTHORIZING EXAMINATION OF PERSONS AND DOCUMENTS PURSUANT TO BANKRUPTCY RULE 2004

INSLAW, Inc. ("INSLAW"), through undersigned counsel and pursuant to Bankruptcy Rule 2004(a), respectfully moves the Court for an order authorizing the examination of persons and documents relating to an agreement between INSLAW and AT&T Information Systems, Inc. ("AT&T") executed August 2, 1984. The grounds for this request are as follows:

1. On August 2, 1984, INSLAW and AT&T entered into a Software Distribution and License Agreement ("Agreement"). In substance, the agreement called for AT&T to loan INSLAW a specialized AT&T computer hardware and software development environment and to advance to INSLAW against future royalties approximately $545,000 so that INSLAW could port certain of its application software products for operation on the AT&T computer hardware. When the porting was completed, AT&T would market the INSLAW software under a private AT&T label throughout the United States paying INSLAW specified royalties on each software sale. At the time of contracting, AT&T envisioned sales of the INSLAW

software in sufficient volume to result in a five-year stream of royalties to INSLAW in the $30-40 million range. Under the terms of the agreement, INSLAW was to complete the porting under an agreed-upon schedule with the time for porting to commence upon the "date of receipt by INSLAW" of the specialized AT&T hardware and software development environment.

2. Although AT&T delivered the specified hardware and software on August 1, 1984, the RM-COBOL software it provided did not function satisfactorily. An internal AT&T memorandum from the project manager, Ernest Arias, dated September 19, 1984, acknowledged the deficiency of the RM-Cobol software, noted that it had been known to other AT&T personnel, and directed the delivery of other suitable replacement software. On September 11, 1984, AT&T provided INSLAW an alternative COBOL software, Micro Focus COBOL, for development use. But this COBOL was Micro Focus' preliminary "interpreter" version instead of the final "compiler" version necessary for testing of the INSLAW software in a real operational mode. In addition, the alternative software required an upgrade in both the AT&T UNIX operating system software and in the AT&T hardware supplied by AT&T to INSLAW. In a December 27, 1984 memorandum, Mr. Arias acknowledged AT&T's agreement that upgraded equipment was necessary and asked other AT&T personnel to provide it as soon as possible.

3. By Purchase Order #204917 dated January 7, 1985, AT&T directed that the upgraded equipment be sent to INSLAW. Notwithstanding this order, as of the filing of INSLAW's petition under Chapter 11 in this Court on February 7, 1985, the new

equipment had not been received by INSLAW. In short, under the terms of the agreement, the time period for INSLAW's development work on the back office software had not then begun because the agreed upon "development environment," i.e., equipment and software, had not yet been provided by AT&T.

4. Despite the failure of AT&T to deliver the specialized "development environment," INSLAW successfully "jerry-rigged" the environment finally supplied in order to be able to carry forward with the porting work. Accordingly, as of the February 7, 1985 petition filing in this Court, INSLAW had performed all the material requirements of the agreement to that point and was not in breach of the agreement.

5. An internal AT&T memorandum from project manager Arias dated February 25, 1985, states:

> INSLAW filed Chapter 11 for creditor protection under the US Federal Bankruptcy Laws on February 7, 1985. A Product Team Decision was made on January 15, 1985 to not support the ISV [Independent Software Vendor, i.e., INSLAW] if the above occurred. The above resulted due to loss of Marketing support for the INSLAW software package. Product Management has requested AT&T-IS Legal to safeguard AT&T-IS' interest and take appropriate contract termination steps.

6. On February 11, 1985 an internal AT&T change order to Purchase Order #204917 was issued, directing that the upgraded computer equipment previously ordered for delivery to INSLAW be delivered to AT&T instead.

7. A second internal AT&T memorandum from project manager Arias dated February 25, 1985 reflects that on February 14, 1985 AT&T representatives met with Guardian Automated Systems, Inc. ("Guardian") for negotiations and on February 16, 1985 executed

an agreement for the provision by Guardian of legal applications software for use on AT&T 3B2 computers. Guardian was a competing bidder to INSLAW in the competition that resulted in the award of the August 2, 1984 contract to INSLAW. The description of the software to be provided AT&T by Guardian under the February 14, 1985 agreement is similar to that to have been provided by INSLAW. Accordingly, it appears that the purpose of the Guardian-AT&T agreement was to replace INSLAW as an AT&T software vendor.

8. On February 15, 1985, Arias received notification from INSLAW of the filing of its Chapter 11 petition, and of the fact that the filing would not "in any way diminish our ability to continue to serve you." The same date, Arias wrote a memorandum directing that immediate and special measures be taken to "ensure the 3B5 computer under no circumstances, is delivered to INSLAW." INSLAW was not apprised of this decision.

9. On March 15, 1985, in a letter to INSLAW counsel Glenn Gerstell and Stanley Salus, AT&T counsel Gregory C. Ranieri requested that communications regarding all contractual and business arrangements between AT&T and INSLAW be directed to appropriate AT&T legal counsel. He stated that "[i]t cannot be emphasized enough that you abide by these requests and have your client refrain from contacting business, marketing, technical, product management and other legal personnel at AT&T Information Systems or at the potential market trial sites of AT&T Information Systems." This demand was inconsistent with the obvious necessity for on-going communications between the project technical and marketing staffs of the two companies.

10. On March 18, 1985, AT&T lodged with the Court a motion for an order directing INSLAW to assume or reject the Agreement. (The motion was apparently not accepted for filing.) This motion was not served on INSLAW until April 2, 1985. Although AT&T had not provided the development environment required by the contract, had recently taken steps to cancel delivery to INSLAW of the necessary equipment, and had prevented communications between the technical and marketing staffs of the two companies essential to performing the contract, AT&T asserted in the motion:

> Pursuant to the Agreement, Debtor was to meet certain milestones for the development of the software. Upon information and belief, Debtor overextended itself in this regard and was never realistically able to meet those milestones. Further, it is unlikely that the Debtor will be in a position to meet the milestones required of it in the future.

In the motion, AT&T also declared that it "must know whether the Debtor intends to meet its contractual deadlines or if it must pursue alternate sources for the development of substitute software." In fact, AT&T had on February 16, 1985, already negotiated and executed an agreement with Guardian Automated Systems, Inc., for the provision of legal applications software for use on AT&T 3B2 computers.

11. By letter dated March 27, 1985 from INSLAW counsel Glenn S. Gerstell to AT&T counsel Ranieri, INSLAW notified AT&T that it was ready and willing to deliver the front office portion of the software, delivery of which was required under the agreement by April 1, 1985. By letter dated March 29, 1985, Mr. Ranieri declined to accept delivery, stating that "until INSLAW resolves the affirmation or rejection of the contract . . . all

contractual responsibilities for AT&T Information Systems are suspended temporarily."

12. Mr. Ranieri's March 29, 1985 letter also notified INSLAW again that there should be no direct communications between INSLAW's project staff and AT&T's project staff and that all communications between the two companies should be through their respective attorneys. This action effectively foreclosed further progress. In an effort to break this impasse, INSLAW's William A. Hamilton, on or about May 13, 1985, telephoned James Dubois, Esquire, Vice President and General Counsel of AT&T Information Systems. This communication resulted in a meeting at AT&T on May 22, 1985 between INSLAW representatives and AT&T business people, but the meeting did not include any of the AT&T project staff whom INSLAW had liaised with prior to the bankruptcy.

13. On February 8, 1985, one day after INSLAW's Chapter 11 filing, Kenneth A. Rosen, Esquire, ("Rosen") of the West Orange, New Jersey law firm Ravin, Sarasohn, Cook, Baumgarten & Fisch, entered a notice of appearance in this proceeding as counsel for AT&T and a demand for service of papers.

14. In 1982, Rosen was employed as an attorney in the office of the United States Trustee for the Southern District of New York. At that time, Cornelius Blackshear was the United States Trustee and Harry Jones was Assistant United States Trustee. Jones testified in a May 1987 deposition in INSLAW's adversary proceeding against the Department of Justice ("DOJ"), that he had known Rosen since 1979, had stayed in touch with him both socially and professionally since that time, and estimated

he had spoken to Rosen "several dozen" times in the two years preceding his deposition. Jones testified, however, that Rosen never mentioned the INSLAW bankruptcy case to him, and that he did "not recall" Rosen ever saying that "people in the Justice Department had an interest in putting Inslaw out of business." Jones Deposition Transcript at 26-27. Judge Blackshear testified at a March 25, 1987 deposition that he had heard rumors that DOJ had such an interest from "attorneys [outside the DOJ] who knew about the Inslaw case or were involved with the Inslaw case from the New York area." Blackshear March 25, 1987 Deposition Transcript at 15-16. Rosen is the only attorney known to INSLAW, who was involved in this case and is from the "New York area."

15. Rosen left the New York United States Trustees office in 1982. The 1983 and 1984 editions of Martindale-Hubbell Legal Directory list Rosen as an associate in the law firm of Burns Summit Rovins & Feldesman in New York. The senior member of that firm at the time was Arnold I. Burns, currently Deputy Attorney General of the United States.

16. On November 6, 1987, William Hamilton telephoned Victor D. Abrunzo, Esquire, formerly employed as an Assistant United States Trustee for the Southern District of New York. After Hamilton identified himself as President of INSLAW and stated that INSLAW was involved in litigation against the DOJ, Hamilton said that he wanted to ask Abrunzo some questions. Abrunzo responded that he "knew all about Brick Brewer and Tony Pasciuto," but he indicated he could not discuss the case, citing 28 C.F.R. § 16.23 which requires prior approval of the

Attorney General for interviews or depositions of present or former DOJ employees about matters arising from their employment. Hamilton then told Abrunzo that he had a question about an attorney in private practice which might not pose such a problem. Abrunzo told him to go ahead and he would stop him if necessary.

Hamilton explained that the attorney was Kenneth Rosen, who had represented AT&T during the first 18 months of the INSLAW bankruptcy and had previously been employed in the U.S. Trustees Office in New York. Hamilton said that he inferred from a number of circumstances which he described that Rosen had been working in concert with officials of DOJ. He told Abrunzo that he was interested in learning who in the DOJ had recruited Rosen into the INSLAW case. First, Abrunzo told Hamilton to research Martindale-Hubbell to find the answer. When Hamilton said he had and that Rosen was listed as an associate in the Ravin, Sarasohn firm, Abrunzo said this was wrong and Hamilton's research had not been thorough enough. Subsequently, Abrunzo volunteered that Rosen had held two jobs since leaving DOJ, then said: "I've already told you too much.

After further conversation, Abrunzo told Hamilton that he had attended a conference in Washington on expansion of the U.S. Trustee program, "chaired by an attorney named Burns, of Burns, Summit." Hamilton asked whether this was Arnold Burns, Deputy Attorney General. Abrunzo replied that it was "one and the same person." Prior to this telephone conversation, Hamilton had no knowledge of any relationship between Rosen and the Burns, Summit firm, or Arnold Burns.

17. On January 5, 1988, Abrunzo was deposed. He

acknowledged making the statements attributed to him by Hamilton above (which Hamilton had memorialized in a two-page contemporaneously written memorandum), but maintained that he had made them sarcastically because of the preposterousness of the theories underlying Hamilton's inquiry; and that he knew of no relationship whatever between Rosen's representation of AT&T and Arnold Burns.

18. In June, 1986, AT&T Vice President and General Attorney Ray Brenner told William and Nancy Hamilton that (a) AT&T had hired Rosen because he was a "school friend" of an attorney in the AT&T Law Department; (b) AT&T had never previously retained the Ravin, Sarasohn firm; and (c) AT&T had recently fired Rosen.

19. In April 1987, William Hamilton wrote to all members of the Unsecured Creditors Committee seeking their support for an INSLAW request to extend the exclusivity period. The letter summarized the discovery which had then been obtained regarding efforts by the Executive Office for United States Trustees to cause INSLAW's liquidation, including Judge Blackshear's initial deposition and his subsequent recantation. Shortly after receiving the letter, Brenner wrote a note across the top of the first page to his subordinate Bonnie Peters, an attorney in the AT&T Legal Department, directing her to meet him at the rental car counter at Washington National Airport on April 15, 1987. Brenner telephoned Hamilton and asked to meet with him in INSLAW's offices on that date. Prior to the meeting, Brenner and Peters telephoned Leigh Ratiner, Esquire, formerly counsel to INSLAW, Inc. in its adversary proceeding against the DOJ and

asked Ratiner, inter alia, whether he thought that Hamilton would accept $50,000 in exchange for giving AT&T a release. At the meeting, however, Brenner indicated that he wanted to resolve AT&T's $381,000 claim as a creditor in this proceeding (the amount advanced to INSLAW against future license payments under the agreement), as well as a smaller separate contract between INSLAW and AT&T, and no settlement offer was made or release requested.

20. During his representation of AT&T as a creditor in this proceeding, Rosen repeatedly took steps which appeared to other similarly situated creditors, as well as to INSLAW, as inconsistent with the apparent best interests of AT&T as an unsecured creditor. For example, in the first months of the bankruptcy he (a) deluged INSLAW's counsel and counsel for the unsecured creditors committee with letters and telephone calls demanding a variety of information; (b) filed an opposition to a fee application of INSLAW's counsel Milbank Tweed; (c) filed an opposition to INSLAW's continued retention of an accountant even though INSLAW had no in-house accountant at the time; (d) filed an opposition to INSLAW's application to employ the outside accounting firm of Arthur Young and Company; (e) objected to the use by INSLAW of desperately needed funds from a Massachusetts receivable; and (f) sought to conduct a separate examination of William Hamilton under Rule 2004, in addition to the hearing conducted under § 341, which he had not attended.

In the aggregate, these actions, seemed to require a time commitment and resulting expense disproportionate to any likely distribution to AT&T as an unsecured creditor in the event of a

liquidation, and harmful to INSLAW's efforts to survive and pay a larger proportion of its creditors' claims. The actions caused counsel for the unsecured creditors committee, a businessman member of the committee, and counsel for INSLAW to write Rosen letters criticizing his actions as inconsistent with the orderly administration of the bankruptcy and questioning his motives. While Rosen's actions seemed inconsistent with AT&T's interests at the time, viewed in the context of the January 15, 1985 decision by AT&T to terminate the INSLAW agreement if a Chapter 11 petition was filed, the actions are consistent with an effort to liquidate INSLAW and thus to avoid any potential problems of a violation of the automatic stay arising from termination of the agreement.

21. The matters set forth above, in the opinion of undersigned counsel, form the basis for a prima facie claim that, after INSLAW's Chapter 11 filing, AT&T willfully breached its agreement with INSLAW, because of INSLAW's Chapter 11 filing, in violation of §362(h). In addition, the circumstances of Mr. Rosen's actions and involvement on AT&T's behalf create, in counsel's view, the reasonable possibility that AT&T, through Rosen, aided the unlawful effort of the DOJ to liquidate INSLAW, either to enable AT&T to carry out its expressed plan to terminate the contract or for other reasons unknown to INSLAW.

22. In the past several weeks, counsel have met with counsel for AT&T and discussed in substance the factual matters described above. Counsel for AT&T have vigorously denied that any willful breach of the automatic stay was committed, citing

discussions between the parties and the circulation by AT&T of a draft motion to require INSLAW to affirm or reject the agreement for a period of months after March 1985. Notwithstanding these claims, the circumstances in their totality raise reasonable and troubling questions, which in undersigned counsel's view have not been adequately answered.

23. For all of the foregoing reasons, INSLAW respectfully requests that the Court enter an order authorizing INSLAW to examine the following persons and documents for the purpose of determining whether and to what extent there has been any violation of the automatic stay under 11 U.S.C. § 362(h):

(a) the depositions of Kenneth A. Rosen, Esquire; Stephanie Lynn, Esquire; Ray Brenner, Esquire; James Dubois, Esquire; Peter Sarasohn, Esquire; David Ravin, Esquire; Bonnie Peters, Esquire; Wallace Hampshire; Bruce Goldstein, Esquire; Stephen Leach, Esquire; Ernest Arias; Jeanne Sullivan; William Ortel; Gregory C. Ranieri, Esquire; Mona Scherrik; and a representative of Guardian Automated Systems, Inc.; and

(b) documents in the possession of AT&T, the Ravin, Sarasohn law firm; Guardian Automated Systems, Inc.; and any of the prospective deponents listed above.

WHEREFORE, INSLAW, Inc. respectfully requests that the Court enter the attached proposed order under the provisions of Bankruptcy Rule 2004.

Charles R. Work
Michael E. Friedlander
Jacqueline E. Zins

McDERMOTT, WILL & EMERY
1850 K Street, N.W., Suite 500
Washington, D. C. 20006

Philip L. Kellogg
James L. Lyons

KELLOGG, WILLIAMS & LYONS
1275 K Street, N.W., Suite 825
Washington, D. C. 20005

Attorneys for Plaintiff
INSLAW, Inc.

DATED: January 19, 1988

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Application for an Order Authorizing Examination of Persons and Documents Pursuant to Bankruptcy Rule 2004 were mailed, postage prepaid this 19th day of January, 1988, to:

Bruce Goldstein, Esquire
Zuckerman, Spaeder, Goldstein, Taylor & Kolker
1201 Connecticut Avenue, N.W.
Washington, D. C. 20036

Harry D. Dixon, Jr., Esquire
Clifton R. Jessup, Jr., Esquire
Dixon, Dixon & Minahan, P.C.
One First National Center
16th, 17th and Dodge Streets
Omaha, Nebraska 68102

Charles A. Docter, Esquire
Docter, Docter & Salus, P.C.
1325 G Street, N.W., Suite 700
Washington, D. C. 20005

John Waites, Esquire
U.S. Trustee
421 King Street, Suite 410
Alexandria, Virginia 22314

Philip L. Kellogg

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
	)	
INSLAW, INC.,	)	**Case No. 85-00070**
	)	
Debtor,	)	**(Chapter 11)**
	)	

ORDER

Upon consideration of the motion of INSLAW, Inc. ("INSLAW") for an order pursuant to Bankruptcy Rule 2004(a) authorizing the examination of persons and documents relating to an agreement between INSLAW and AT&T Information Systems, Inc. ("AT&T") executed August 2, 1984 and any possible violation of 11 U.S.C. § 362(h) in connection therewith, the opposition thereto by AT&T and argument of counsel, it is hereby

ORDERED that INSLAW's motion be and hereby is granted and INSLAW is authorized to examine the following persons and documents, at the times and places as set forth hereafter:

Kenneth A. Rosen, Esquire

10:00 a.m., February 16, 1988

Stephanie Lynn, Esquire

3:00 p.m., February 16, 1988

Ray Brenner, Esquire

10:00 a.m., February 17, 1988

James Dubois, Esquire

2:00 p.m., February 17, 1988

Peter Sarasohn, Esquire

10:00 a.m. February 18, 1988

David Ravin, Esquire

11:30 a.m., February 18, 1988

Bonnie Peters, Esquire

3:00 p.m., February 18, 1988

Mr. Ernest Arias

9:00 a.m., February 19, 1988

Ms. Jeanne Sullivan

11:30 a.m., February 19, 1988

William Ortel

1:30 p.m., February 19, 1988

Gregory C. Ranieri, Esquire

2:30 p.m., February 19, 1988

Ms. Mona Scherrik

4:00 p.m., February 19, 1988

All of the foregoing depositions will be taken at the offices of Crummy, Del Deo, Dolan, Griffin & Vecchione, One Gateway Center, Newark, New Jersey 07102.

Bruce Goldstein, Esquire

10:00 a.m., February 23, 1988

Stephen Leach, Esquire

2:00 p.m., February 23, 1988

Mr. Wallace Hampshire

3:00 p.m., February 23, 1988

The depositions of Messrs. Goldstein, Leach and Hampshire will be taken at the offices of McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006.

An authorized representative of

Guardian Automated Systems, Inc.

10:00 a.m., February 25, 1988

The Guardian deposition will be taken in the offices of Guardian Automated Systems, Inc., 8031 Philips Highway #2, Jacksonville, Florida 32216; and it is

FURTHER ORDERED that all documents, not previously produced, relating to the August 2, 1984 agreement between INSLAW and AT&T and any possible violation of 11 U.S.C. § 362(h) in connection therewith, in the possession of AT&T or Messrs. Ravin, Sarasohn, Cook, Baumgarten & Fisch, be produced at the offices of Crummy, Del Deo, Dolan, Griffinger & Vecchione, One Gateway Center, Newark, New Jersey 07102 at 2:00 p.m. on February 12, 1988; and it is

FURTHER ORDERED that counsel for INSLAW shall promptly cause the issuance and service of appropriate subpoenas upon the persons and entities identified hereinabove. Bankruptcy Rule 2004(c).

_____

United States Bankruptcy Judge

Dated:_____

March 21, 1988

MEMORANDUM TO MS. BRUCE

I have now looked over the INSLAW material fairly carefully. I find myself quite perplexed. Let me first say that I personally know quite a number of the DOJ people involved because I worked with both the Executive Office for United States Trustees and the Executive Office for United States Attorneys. I also know Shaheen. You, of course, know of my relationship with Elliot Richardson. I also know a number of the bankruptcy counsel involved.

My basic reaction is that all sides of the controversy have acted in an extraordinary manner. I find it hard to believe INSLAW's allegations, but DOJ's actions nevertheless seem strange. I think that Shaheen's opinion in the Pascinto matter is extremely bizarre. I think that the bankruptcy judge drew extraodinary conclusions. On top of all that, I have the following problems that push and pull in several different directions:

1) I question whether this is a criminal matter.

2) I feel fairly strongly that DOJ, especially OPR, would have a tremendous conflict of interest in investigating this matter. It has basically already taken a position and DOJ has both a direct financial and litigation interest in the matter.

3) The connection to Meese is utterly threadbare.

4) The facts appear weird, amazing, but just not that interesting.

Can I think on it some more?

LHCjr./jb

Lovida

We need to write to work this by Friday & J.M. needs to review the matter before then - please turn file over to him - CAA

Lovida

March 21, 1988

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LHCjr./jb

Lovida

bc: James McKay

MARCH 22, 1988

MEMORANDUM TO CAROL E. BRUCE

RE: INSLAW

After thinking more about the INSLAW matter, my primary concerns are that (1) I still do not see a criminal case; (2) there is little nexus to Meese; (3) we do not have DOJ's side of the story at all and the INSLAW side of the story is insufficient to merit a full-scale investigation.

I am still uncomfortable about any kind of referral to Justice, because Justice has a definite conflict-of-interest. I did note with interest that the Senate Permanent Subcommittee on Investigations is allegedly looking into the matter, according to the Barron's article most recently given to me.

I would recommend the following: (1) Request that Larry McWhorten, who is the acting head of the Executive Office for United States Attorneys, come over for a formal interview and find out what happened from Justice's point of view. If he tends to credibly indicate that this is a civil and not a criminal matter, then I would make no formal referral.

I would then write Mr. Work a letter saying that there is insufficient evidence at this time to pursue a criminal investigation by this Office both because it appears to be a civil dispute and because there is insufficient

evidence of a nexus with Mr. Meese. I would informally call the Senate Subcommittee to find out if they really are conducting an investigation. If so I would also write a low-key letter to the Subcommittee and ask that, in the event the investigation develops any evidence that there is a criminal violation of law that could involve Mr. Meese, it should provide such information to us. I would cross copy all of these letters to Justice.

One recommendation I would also make that you may not appreciate is that if there <u>is</u> a criminal investigation, it should be performed by this Office because of Justice's conflict <u>and</u> the remote, but possible, nexus to Meese. There is little point in appointing a new IC over this kind of matter.

Lovida

LHCjr:ce

cc: James C. McKay

OFFICE OF INDEPENDENT COUNSEL
1111 EIGHTEENTH STREET, N. W.
SUITE 500
WASHINGTON, D. C. 20036
(202) 786-6326

March 23, 1988

HAND DELIVERED

H. Marshall Jarrett
Deputy Chief, Public Integrity Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, D.C.

Dear Mr. Jarrett:

On February 8, 1988, William and Nancy Hamilton of INSLAW came to our offices and met with Associate Independent Counsel Richard Simpson and Special Agents of the F.B.I. concerning their allegations of possible criminal wrongdoing by Attorney General Edwin Meese III in connection with the INSLAW-Department of Justice dispute over the PROMIS litigation management computer software product. They came with their counsel, Charles Work, Esq.

The Hamiltons presented us with a memorandum dated February 8, 1988 and related materials. In addition, we received a letter dated February 1, 1988, from United States Bankruptcy Judge George Francis Bason, Jr. bringing the INSLAW matter to our attention.

We understand that the Hamiltons have provided your office with the same materials that they have provided to us and that you also have a copy of the letter from the bankruptcy judge. We also understand that the Hamiltons have asked you to conduct a preliminary investigation under the Independent Counsel Reauthorization Act of 1987.

After review of all of this material, we have determined that it would be inappropriate for this Office to unilaterally assume jurisdiction over the question of whether Attorney General Meese committed any wrongdoing in connection with an alleged "large DOJ procurement fraud" in the INSLAW dispute.

Accordingly, we are simply calling these matters to your attention for such action, if any, that your office may wish to take.

Sincerely,

JAMES C. MCKAY
INDEPENDENT COUNSEL

BY: Carol E. Bruce
Deputy Independent Counsel

CEB:mck

cc: Charles Work, Esq.